

and consistent with engineering and environmental requirements.

§ 335.5 Applicable laws.

(a) The Clean Water Act (33 U.S.C. 1251 et seq.) (also known as the Federal Water Pollution Control Act Amendments of 1972, 1977, and 1987).

(b) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) (commonly referred to as the Ocean Dumping Act (ODA)).

§ 335.6 Related laws and Executive Orders.

(a) The National Historic Preservation Act of 1966 (16 U.S.C. 470a et seq.), as amended.

(b) The Reservoir Salvage Act of 1960 (16 U.S.C. 469), as amended.

(c) The Endangered Species Act (16 U.S.C. 1531 et seq.), as amended.

(d) The Estuary Protection Act (16 U.S.C. 1221).

(e) The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), as amended.

(f) The National Environmental Policy Act (42 U.S.C. 4341 et seq.), as amended.

(g) The Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) as amended.

(h) Section 307(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456 (c)), as amended.

(i) The Water Resources Development Act of 1976 (Pub. L. 94-587).

(j) Executive Order 11593, *Protection and Enhancement of the Cultural Environment*, May 13, 1971, (36 FR 8921, May 15, 1971).

(k) Executive Order 11988, *Floodplain Management*, May 24, 1977, (42 FR 26951, May 25, 1977).

(l) Executive Order 11990, *Protection of Wetlands*, May 24, 1977, (42 FR 26961, May 25, 1977).

(m) Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982, (47 FR 3959, July 16, 1982).

(n) Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979.

§ 335.7 Definitions.

The definitions of 33 CFR parts 323, 324, 327, and 329 are hereby incorporated. The following terms are defined or interpreted from parts 320

through 330 for purposes of 33 CFR parts 335 through 338.

Beach nourishment means the discharge of dredged or fill material for the purpose of replenishing an eroded beach or placing sediments in the littoral transport process.

Emergency means a situation which would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate and unforeseen significant economic hardship if corrective action is not taken within a time period less than the normal time needed under standard procedures.

Federal standard means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound engineering practices and meeting the environmental standards established by the 404(b)(1) evaluation process or ocean dumping criteria.

Navigable waters of the U.S. means those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, have been used in the past, or may be susceptible to use with or without reasonable improvement to transport interstate or foreign commerce. A more complete definition is provided in 33 CFR part 329. For the purpose of this regulation, the term also includes the confines of Federal navigation approach channels extending into ocean waters beyond the territorial sea which are used for interstate or foreign commerce.

Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Statement of Findings (SOF) means a comprehensive summary compliance document signed by the district engineer after completion of appropriate environmental documentation and public involvement.

Territorial sea means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking

the seaward limit of inland waters, extending seaward a distance of three miles as described in the convention on the territorial sea and contiguous zone, 15 U.S.T. 1606.

PART 336—FACTORS TO BE CONSIDERED IN THE EVALUATION OF ARMY CORPS OF ENGINEERS DREDGING PROJECTS INVOLVING THE DISCHARGE OF DREDGED MATERIAL INTO WATERS OF THE U.S. AND OCEAN WATERS

Sec.

336.0 General.

336.1 Discharges of dredged or fill material into waters of the U.S.

336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14912, Apr. 26, 1988, unless otherwise noted.

§ 336.0 General.

Since the jurisdiction of the CWA extends to all waters of the U.S., including the territorial sea, and the jurisdiction of the ODA extends over ocean waters including the territorial sea, the following rules are established to assure appropriate regulation of discharges of dredged or fill material into waters of the U.S. and ocean waters.

(a) The disposal into ocean waters, including the territorial sea, of dredged material excavated or dredged from navigable waters of the U.S. will be evaluated by the Corps in accordance with the ODA.

(b) In those cases where the district engineer determines that the discharge of dredged material into the territorial sea would be for the primary purpose of fill, such as the use of dredged material for beach nourishment, island creation, or construction of underwater berms, the discharge will be evaluated under section 404 of the CWA.

(c) For those cases where the district engineer determines that the materials proposed for discharge in the territorial sea would not be adequately evaluated under the section 404(b)(1) guidelines of the CWA, he may evaluate that material under the ODA.

§ 336.1 Discharges of dredged or fill material into waters of the U.S.

(a) *Applicable laws.* Section 404 of the CWA governs the discharge of dredged or fill material into waters of the U.S. Although the Corps does not process and issue permits for its own activities, the Corps authorizes its own discharges of dredged or fill material by applying all applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines.

(1) The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.

(2) Section 307 of the Coastal Zone Management Act (CZMA) requires that certain activities that a Federal agency conducts or supports be consistent with the Federally-approved state management plan to the maximum extent practicable.

(b) *Procedures.* If changes in a previously approved disposal plan for a Corps navigation project warrant re-evaluation under the CWA, the following procedures should be followed by district engineers prior to discharging dredged material into waters of the U.S. except where emergency action as described in § 337.7 of this chapter is required.

(1) A public notice providing opportunity for a public hearing should be issued at the earliest practicable time. The public notification procedures of § 337.1 of this chapter should be followed.

(2) The public hearing procedures of 33 CFR part 327 should be followed.

(3) As soon as practicable, the district engineer will request from the state a 401 water quality certification and, if applicable, provide a coastal zone consistency determination for the Corps activity using the procedures of § 336.1(b) (8) and (9), respectively, of this part.

(4) Discharges of dredged material will be evaluated using the guidelines authorized under section 404(b)(1) of the CWA, or using the ODA regulations, where appropriate. If the guidelines alone would prohibit the designation of a proposed discharge site, the